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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/544,196	04/06/2000	Kam Chan	2705-94	8932

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EXAMINER

WAHBA, ANDREW W

ART UNIT

PAPER NUMBER

2661

DATE MAILED: 02/25/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/544,196

Applicant(s)

CHAN ET AL.

Examiner

Andrew W Wahba

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 12/04/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Response to Arguments

1. Applicant's arguments filed 12/04/03 have been fully considered but they are not persuasive. In paragraph 3, the applicant argues that Shaffer does not immediately or permanently refuse an incoming call. This issue is addressed as new matter, in section 2 of this Office action. Even without the issue of new matter, the applicant's arguments attempt to distinguish between temporarily and permanently dropping a call. The ability to temporarily deny calls requires additional capabilities, such as a queue. Such a capability is likely have been developed so as to avoid refusing a call.

In paragraph 4, the applicant argues that claims 2 and 9 have been amended such that the gateway utilization threshold is a value below the total processing capability of the gateway. Again, a gateway utilization threshold is not supported on page 5 of the specification, but rather a CPU utilization threshold. Even without the issue of new matter, a threshold must be below the total processing capability of the gateway. Otherwise, it would serve no function.

Claim Rejections - 35 USC § 112

2. Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. With respect to independent claim 1, the applicant changed "CPU utilization value" to "gateway utilization value". While the "CPU

utilization value" may certainly contribute to the "gateway utilization value", the two terms are not equivalent, as there may be other factors that contribute to gateway performance. A "gateway utilization value" is not mentioned in the specification.

With regard to dependent claim 2, the term "gateway utilization threshold" was added. A "gateway utilization threshold" is not mentioned in the specification.

With regard to independent claims 1, 3 and 7, the applicant added the phrase "immediately and permanently" so that claim limitations require that an incoming call is immediately and permanently refused. Referring to the specification, the applicant only states that an "incoming call is refused" (page 5, lines 32-34). The term "permanent" may be interpreted as contradicting the specification, as a "busy signal" is administered (page 5, line 34). There is nothing to prevent the caller from calling again at a later time. In this manner the call is not permanently refused.

With regard to dependent claim 9, the term "gateway utilization threshold" is used. A "gateway utilization threshold" is not mentioned in the specification.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-3, 5 and 7-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Shaffer et al. Referring to claims 1 and 7, Shaffer et al. discloses a system that

compares current processor availability with the expected processor usage required to establish a call. Inherent components of the system presented by Shaffer et al. are the usage of a computer-readable medium, the ability to detect incoming calls as well as the capability to assess processor utilization (see FIG. 1 and FIG. 4). Shafer et al. further presents a system of handling calls in the event that the processor resources required to establish a call are not available. The call is placed in a queue, and the processor is periodically monitored until it is able to support additional calls. In this manner, the call is temporally denied (see column 3, lines 7-14).

With respect to claims 2 and 8, Shaffer et al. identifies incoming calls as they are received. As incoming calls arrive, the current usage of the processor is compared to the additional usage required to support additional calls. The applicant does not present characteristics of the ring flag that would distinguish it from the manner in which Shaffer et al. recognizes incoming calls.

In reference to claim 3, Shaffer et al. discloses a method for monitoring processor load that assures that the processor resources available are greater than those required for the support of each additional call. In the event that the available resources exceed those required, the call is connected. In the alternate event that the required resources are greater than those available, the call is temporarily denied and placed in a queue, where available resources are later compared with those required to establish a call (see column 3, lines 7-14).

Regarding claim 5, Shaffer et al. discloses a system that does not allow the processor to become overloaded with the handling of an additional call. Therefore, the

system must know the processors maximum capabilities are without degradation in service.

With respect to claim 9, the applicant does not disclose any benefit or reason for selecting a CPUT value that is 70% utilization of the CPU. Rather, the effect of higher or lower values is explained. 70% is not shown to have any optimal characteristics and it is inherent that Shaffer et al faced the same tradeoff between sound quality and call volume.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al.. Shaffer et al. discloses a system and method that compares resource availability with the recourse requirements needed to support an additional call. The applicant presents a similar system in which claims 4 and 6 limit the device such that the memory element is a NVRAM. NVRAM continues to store data in memory in the event that power is lost. Shaffer et al. does not disclose the specific type of memory device used in their system. In their system, Shaffer et al. may have selected anyone of a variety of memory deices. It would have been obvious to one of ordinary skill in the art to select NVRAM, to prevent the loss of information when power is lost.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew W Wahba whose telephone number is (703) 305-4684. The examiner can normally be reached on M-F 8:30-5:30.

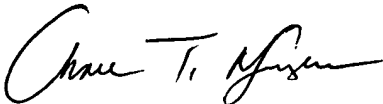
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas W Olms can be reached on (703) 305-4703. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrew Wahba



February 19, 2004



CHAU NGUYEN
SUPERVISORY PATENT EXAMINER
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